



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

No. 99/43

August 20, 1999

TO COUNTY ASSESSORS,
COUNTY COUNSELS, COUNTY
ASSESSMENT APPEALS BOARDS,
AND OTHER INTERESTED PARTIES:

**NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION**

**ADOPT PROPERTY TAX RULE 137 – APPLICATION OF THE WELFARE EXEMPTION
TO PROPERTY USED FOR HOUSING**

PUBLIC HEARING: WEDNESDAY, OCTOBER 6, 1999 AT 1:30 P.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 (c) of the Government Code, proposes to adopt Rule 137, Application of the Welfare Exemption To Property Used For Housing, in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on October 6, 1999. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by October 6, 1999.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The State Board of Equalization proposes to adopt Rule 137 to interpret and clarify that the welfare exemption from property taxation applies to property of qualified nonprofit organizations used for housing. The proposed rule is in response to a petition for regulatory action pursuant to Government Code section 11340.6, requesting that the Board of Equalization exercise its rulemaking authority to adopt a regulation that would clarify the application of the welfare exemption to property used for housing.

The express terms of the proposed action, written in plain English, are available from the agency contact person named in this notice.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed adoption of Rule 137 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the new rule will result in no additional direct or indirect costs to any State agency or any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, and that there are no other non-discretionary costs or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code Section 11346.53(c), the Board of Equalization finds that the adoption of Rule 137 will not have a significant adverse economic impact on business, because the proposed changes only clarify existing statutory interpretations.

The adoption of the rule will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The adoption of the rule as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed adoption of the rule will not affect small business because the new rule only clarifies existing statutory interpretations.

ADVERSE ECONOMIC IMPACT ON PRIVATE PERSONS/BUSINESSES

No impact.

FEDERAL REGULATIONS

There are no comparable Federal regulations.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCES

Revenue and Taxation Code sections 214, 214.01, 214.1, 214.2, 254, 254.5, 255.

CONTACT

Questions regarding the content of the proposed regulation should be directed to: Ms. Mary Ann Alonzo, Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 324-1392; FAX (916) 323-3387.

Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, and P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND OF TEXT OF PROPOSED REGULATIONS

The Board has prepared a statement of reasons and underscore version of the proposed rule. Those documents and all information on which the proposed regulation is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed rule are available on the internet at the Board's web site, <http://www.boe.ca.gov>.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law, adopt the proposed rule if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified rule will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Stumpf. The State Board of Equalization will consider written comments on the modified rule for fifteen days after the date on which the modified rule is made available to the public.

Dated: August 5, 1999

STATE BOARD OF EQUALIZATION

/s/ Janice Masterton

Janice Masterton

Chief, Board Proceedings Division

**Property Tax Rule 137. Application of the Welfare Exemption
To Property Used for Housing**

- (a) Housing and related facilities owned and used by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific or charitable purposes is eligible for the welfare exemption from property taxation as provided in Revenue and Taxation Code section 214. A single uniform statewide standard shall be used to determine whether the welfare exemption applies to housing and related facilities owned and used by qualified organizations. The standard is whether the use of the property by the organization for housing and related facilities is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization. For purposes of applying the uniform statewide standard, the phrase “Use of property that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization” includes the use of property that is institutionally necessary for the operation of the organization as provided in subdivision (i) of section 214 of the Revenue and Taxation Code.
- (b) For purposes of determining whether property used for housing and related facilities is eligible for the welfare exemption, the terms “incidental to and reasonably necessary for” and “institutionally necessary” are identical and interchangeable; the term “institutionally necessary” means and includes “incidental to and reasonably necessary for” and vice versa. No distinctions in application of the welfare exemption to housing and related facilities shall be based on any difference or divergence between the terms.

- (c) For purposes of determining eligibility for the welfare exemption, it is the use of the housing and related facilities by the organization owning the property that is to be considered, not the use by the occupants. If the organization's use of the property is incidental to and reasonably necessary for the accomplishment of the organization's exempt purposes, the property is eligible for exemption. The occupant's use for personal or residential purposes is secondary to the organization's primary exempt purpose and shall not disqualify the property from exemption either in whole or in part.
- (d) The location of the property in relation to other property owned and used by the exempt organization is irrelevant to the application of the exemption. It is the use of the property by the organization which is the determining factor. The fact that the housing is located on property in a remote area may be considered in determining whether the housing is incidental to and reasonably necessary for the operation of the organization.
- (e) EXAMPLES: The following examples illustrate the application of the welfare exemption to housing and related facilities

Example No. 1

The two-story building with seven completely-furnished apartments is used exclusively to provide temporary low-cost housing to missionaries, clergy, other religious workers and their families on furlough status while in the United States. The articles of incorporation of the nonprofit religious corporation which owns and operates the property provide that its purpose is to provide housing for missionaries.

clergymen, other religious workers and their families who work in establishing and furthering its religious purposes throughout the world. This housing is exempt as a facility incidental to and reasonably necessary for the accomplishment of the church's religious and charitable purposes.

Example No. 2

The property of a private school is used to provide board and housing to students. Although most of the school's students were day students, some students relied upon the school for board and lodging. These services provided by the school are reasonably related to the exempt educational activity, and are an exempt use of the property within the school's educational purpose.

Example No. 3

Property owned by a nonprofit corporation is used for housing and related facilities for persons who assemble two weeks each year for purposes of religious instruction and worship. The residential facilities are exempt as within the organization's religious purpose. Housing for caretakers or maintenance workers required to reside at the religious conclave facility is exempt as institutionally necessary.

Example No. 4

A nonprofit religious organization owns housing which it provides to its ministers and their families. Organizational documents require the church to provide housing as part of a system that allows the organization flexibility in assigning the clergy, aids in recruiting and keeping the clergy and provides the clergy with privacy and

respite. The property also is used regularly for church functions such as youth meetings and organizational committee meetings. The church's use of its property to provide housing for its clergy is exempt as reasonably necessary for the furtherance of its religious purpose. .

Example No. 5

The primary missionary activity of a nonprofit religious organization is to publish and disseminate its religious literature to the general public. The organization owns a complex consisting of a temple and six apartment buildings that provide work areas for about 250 devotees, about one-half of whom are involved in the publishing and distribution of the organization's religious books and magazines. The work areas are frequently used at night as sleeping areas since most of the devotees live in the rooms in which they work. The devotees follow a seven-hour daily regimen of communal and individual daily prayers, meditations, chanting, and attendance at temple services and observe a strict diet which necessitates living in the temple complex. Property used for housing the devotees in the temple complex is exempt as reasonably necessary for the fulfillment of the organization's religious objectives.

Note: *Authority:* Government Code Section 15606(a).

Reference: Sections 214, 214.01, 214.1, 214.2, 254, 254.5, 255 Revenue and Taxation Code.